IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.1343 of 2007

Date of Decision: 13.03.2007

Punit Ahluwalia ..Petitioner

Vs.

Arjan Singh & Ors. ..Respondents

Coram: Hon'ble Mr. Justice Vinod K.Sharma

Present: Mr.D.S.Walia, Advocate,
for the petitioner.

Vinod K.Sharma,J. (Oral)

The petitioner by way of this revision petition has challenged the order dated 10.2.2007 passed by the learned Civil Judge (Junior Division), Chandigarh dismissing the application moved by the petitioner under Section 151 of the Code of Civil Procedure.

The petitioner by way of said application sought a specific order from the court as to whether the statements of P.W.1 and P.W.2 were to be read in evidence or not as these witnesses were examined before the petitioner was impleaded in the suit as defendant No.3. It was further pleaded that subsequent to his impleadment, additional issues were framed

on 10.12.2005. Alternative relief claimed was that these two witnesses be ordered to be produced in the court for the purposes of cross-examination by him.

The learned Trial Court rejected the said application by observing that P.W.1 and P.W.2 were examined and were further subjected to cross-examination by Dr.S.R.Bawa and Sanjiv Sharma, the original defendants in the case. The learned court below was pleased to observe that in view of the order dated 10.10.2006 passed by this Court in CR No.947 of 2006 the petitioner would be deemed to have stepped into the shoes of his vendor Dr.S.R.Bawa. In spite of this finding, the learned Trial Court has left the question open as to whether this evidence is to be read or not to be decided at the time of final hearing. The alternative plea of the petitioner for direction to the plaintiff to produce these witnesses for the purposes of cross-examination was rejected by relying upon the judgment of Hon'ble Supreme Court in the case of **Municipal Corporation for Greater Bombay Vs. Lala Pancham of Bombay & Others, AIR 1965 SC 1008.**

Mr. D.S.Walia, learned counsel appearing on behalf of the petitioner challenged the impugned order on the ground that the petitioner has a right to know as to whether the evidence on record is to be read or not before the matter is proceeded further. In support of this contention learned counsel for the petitioner has placed reliance on the judgments of this Court in the case of **Raj Kumar Vs. Bawa Jai Gopal Singh 2006 (I) RCR (Rent) 222** and **Girdhari Lal Vs. Ritesh Mahajan and another 2005(2) L.L.R. (Punjab) 597.** He also placed reliance on the judgment of Hon'ble Supreme Court in the case of **R.V.E.Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P.Temple and another AIR 2003 Supreme**

Court 4548. This contention of the learned counsel for the petitioner is totally misconceived. The judgments relied upon by the learned counsel for the petitioner are not relevant to the point in issue. In the judgments referred to above by the learned counsel for the petitioner the Hon'ble Supreme Court as well as this Court have been pleased to lay down that question as to whether the document sought to be exhibited which is objected to by the other party can be taken into evidence or not is to be decided first and cannot be postponed to a later date. However, no such situation/question arises in the present case as the evidence of P.W.1 and P.W.2 was duly recorded and they were subjected to cross-examination by the defendants. The petitioner has merely stepped into the shoes of original vendor and therefore, no fault can be found with the order passed by he learned Trial Court on this ground.

Learned counsel for the petitioner thereafter contended that the learned court below was wrong in observing that in CR No.947 of 2006 decided on 10.10.2006 it was held that the petitioner has stepped into the shoes of Dr.S.R.Bawa, the original vendor. This contention of the learned counsel for the petitioner is also misconceived as this Court in the said judgment has been pleased to observe as under:-

> "Since, sale in favour of the petitioner is during the pendency of the suit for specific performance filed by Arjan Singh, the said sale is hit by the doctrine of lis pendense and will not confer better title than his vendor in the suit property. In terms of Section 19 of the Specific Relief Act, 1963, the court granting decree for specific performance of the agreement, if any, in the suit filed by Arjan Singh, is competent to direct the

purchaser from Dr.Bawa to associate the vendor as well. Therefore, the reasons given by the learned trial Court are not sustainable."

Thus, it is clear that this Court has already held that the sale deed in favour of the petitioner is hit by the doctrine of lis pendens which does not confer any independent right on the petitioner.

No merit. Dismissed.

March 13,2007 **(Vinod K.Sharma)**
rp **Judge**